

# **Exhibit A**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

MAGIC LEAP, INC.,

Plaintiff,

v.

CHI XU, an individual; HANGZHOU  
TAIRUO TECHNOLOGY CO., LTD., d/b/a  
NREAL,

Defendants.

Case No. 5:19-cv-03445-LHK

**[DEFENDANTS' PROPOSED]  
PROTECTIVE ORDER FOR  
LITIGATION INVOLVING HIGHLY  
SENSITIVE CONFIDENTIAL  
INFORMATION AND/OR TRADE  
SECRETS**

Courtroom: 6  
Magistrate Judge: Hon. Susan van Keulen

[DEFENDANTS' PROPOSED]  
PROTECTIVE ORDER  
5:19-cv-03445-LHK

1     **1.     PURPOSES AND LIMITATIONS**

2             Disclosure and discovery activities in this action are likely to involve production of  
 3     confidential, proprietary, or private information for which special protection from public  
 4     disclosure and from use for any purpose other than prosecuting this litigation may be warranted.  
 5     Accordingly, the Parties hereby stipulate to and petition the Court to enter the following  
 6     Stipulated Protective Order.

7             1.1     Protected Material designated under the terms of this Stipulated Protective Order  
 8     shall be used by a Receiving Party solely for this case, and shall not be used directly or indirectly  
 9     for any other purpose whatsoever.

10            1.2     The Parties acknowledge that this Order does not confer blanket protections on all  
 11    disclosures or responses to discovery and that the protection it affords from public disclosure and  
 12    use extends only to the limited information or items that are entitled to confidential treatment under  
 13    the applicable legal principles. The Parties further acknowledge, as set forth in Section 14.4, below,  
 14    that this Stipulated Protective Order does not entitle them to file confidential information under  
 15    seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards that  
 16    will be applied when a Party seeks permission from the Court to file material under seal.

17     **2.     DEFINITIONS**

18            2.1     Challenging Party: a Party or Non-Party that challenges the designation of  
 19    information or items under this Order.

20            2.2     “CONFIDENTIAL” Information or Items: information (regardless of how it is  
 21    generated, stored, or maintained) or tangible things that qualify for protection under Federal Rule  
 22    of Civil Procedure 26(c).

23            2.3     Counsel (without qualifier): Outside Counsel of Record (as well as their support  
 24    staff).

25            2.4     Designated In-House Counsel: Subject to Section 7.5, In-House Counsel who seek  
 26    access to Protected Material in this matter.

27            2.5     Designating Party: a Party or Non-Party that designates information or items that it  
 28    produces in disclosures or in responses to discovery as “CONFIDENTIAL,” “HIGHLY

1 CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE  
2 CODE.”

3 2.6 Disclosure or Discovery Material: all items or information, regardless of the  
4 medium or manner in which it is generated, stored, or maintained (including, among other things,  
5 testimony, transcripts, and tangible things), that are produced or generated in disclosures or  
6 responses to discovery in this matter.

7 2.7 Expert: a person with specialized knowledge or experience in a matter pertinent to  
8 the litigation who (1) has been retained by a Party or its Counsel to serve as an expert witness or as  
9 a consultant in this action, (2) is not a current employee of a Party or of a Party’s competitor in the  
10 field of spatial computing (which encompasses augmented, virtual and hybrid (or mixed) reality  
11 technology , and (3) at the time of retention, is not anticipated to become an employee of a Party  
12 or of a Party’s competitor in the field of spatial computing (which encompasses augmented, virtual  
13 and hybrid (or mixed) reality technology.

14 2.8 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or  
15 Items: extremely sensitive “Confidential Information or Items,” disclosure of which to another  
16 Party or Non-Party would create a substantial risk of serious harm.

17 2.9 “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items: extremely  
18 sensitive “Confidential Information or Items” representing computer code and associated  
19 comments and revision histories, formulas, engineering specifications, or schematics that define or  
20 otherwise describe in detail the algorithms or structure of software or hardware designs, disclosure  
21 of which to another Party or Non-Party would create a substantial risk of serious harm.

22 2.10 In-House Counsel: attorneys who are employees of a Party to this action. In-House  
23 Counsel does not include Outside Counsel of Record or any other outside counsel.

24 2.11 Non-Party: any natural person, partnership, corporation, association, or other legal  
25 entity not named as a Party to this action.

26 2.12 Outside Counsel of Record: attorneys who are not employees of a Party to this action  
27 but are retained to represent or advise a Party to this action and have appeared in this action on  
28 behalf of that Party or are affiliated with a law firm which has appeared on behalf of that Party.

2.13 Party: any party to this action, including all of its officers, directors, employees, retired employees who receive a pension, consultants, retained experts, and outside counsel (and their support staff).

2.14 Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material in this action.

2.15 Professional Vendors: persons or entities that provide contract document review or other litigation support services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing, or retrieving data in any form or medium) and their employees and subcontractors.

2.16 Protected Material: any Disclosure or Discovery Material that is designated as “CONFIDENTIAL,” as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or as “HIGHLY CONFIDENTIAL – SOURCE CODE.”

2.17 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing Party.

### **3. SCOPE**

3.1 The protections conferred by this Stipulated Protective Order cover not only Protected Material (as defined above), but also (1) any information copied or extracted from Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations, or presentations by Parties or their Counsel that might reveal Protected Material.

3.2 The protections conferred by this Stipulated Protective Order do not cover the following information: (a) any information that is in the public domain at the time of disclosure to a Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as a result of publication not involving a violation of this Order, including becoming part of the public record through trial or otherwise; and (b) any information (i) known to the Receiving Party prior to the disclosure and not governed by any confidentiality agreement between the Designating Party and Receiving Party or (ii) obtained by the Receiving Party after the disclosure from a source who

1 obtained the information lawfully and under no obligation of confidentiality to the Designating  
2 Party. Any use of Protected Material at trial shall be governed by a separate agreement or order.

3 3.3 Nothing in this Stipulated Protective Order shall prevent or restrict a Producing  
4 Party's own disclosure or use of Protected Material that it designated for any purpose, and nothing  
5 in this Order shall preclude any Producing Party from showing Protected Material that it designated  
6 to an individual who prepared the Protected Material.

7 3.4 Nothing in this Order shall be construed to prejudice any Party's right to use any  
8 Protected Material in court or in any court filing with the consent of the Producing Party or by order  
9 of the Court.

#### 10 **4. DURATION**

11 Even after final disposition of this litigation, the confidentiality obligations imposed by this  
12 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order  
13 otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and  
14 defenses in this action against all Parties, with or without prejudice; and (2) final judgment herein  
15 after the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this  
16 action, including the time limits for filing any motions or applications for extension of time pursuant  
17 to applicable law.

#### 18 **5. DESIGNATING PROTECTED MATERIAL**

19 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party  
20 or Non-Party that designates information or items for protection under this Order must take care to  
21 limit any such designation to material that qualifies under the appropriate standards. Mass,  
22 indiscriminate, or routinized designations are prohibited. Designations that are shown to be clearly  
23 unjustified or that have been made for an improper purpose (e.g., to unnecessarily encumber or  
24 impede the case development process or to impose unnecessary expenses and burdens on other  
25 Parties) expose the Designating Party to sanctions. If it comes to a Designating Party's attention  
26 that information or items that it designated for protection do not qualify for protection at all or do  
27 not qualify for the level of protection initially asserted, that Designating Party must promptly notify  
28 all other Parties that it is withdrawing the mistaken designation.

1           5.2    Timing of Designations. Except as otherwise provided in this Order (*see, e.g.*,  
2 second paragraph of Section 5.3(a) below), or as otherwise stipulated or ordered, Disclosure or  
3 Discovery Material that qualifies for protection under this Order must be clearly so designated  
4 before the material is disclosed or produced.

5           5.3    Manner of Designations. Designation in conformity with this Order requires:

6                   (a)    for information in documentary form (*e.g.*, paper or electronic documents,  
7 but excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing  
8 Party affix the legend “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
9 ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE” to each page that contains Protected  
10 Material.

11           A Party or Non-Party that makes original documents or materials available for inspection  
12 need not designate them for protection until after the inspecting Party has indicated which material  
13 it would like copied and produced. During the inspection and before the designation, all of the  
14 material made available for inspection shall be deemed “HIGHLY CONFIDENTIAL –  
15 ATTORNEYS’ EYES ONLY.” After the inspecting Party has identified the documents it wants  
16 copied and produced, the Producing Party must determine which documents, or portions thereof,  
17 qualify for protection under this Order. Then, before producing the specified documents, the  
18 Producing Party must affix the appropriate legend (“CONFIDENTIAL,” “HIGHLY  
19 CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE  
20 CODE”) to each page that contains Protected Material.

21                   (b)    for testimony given in deposition or in other pretrial or trial proceedings, that  
22 the Designating Party identify on the record, before the close of the deposition, hearing, or other  
23 proceeding, all protected testimony and specify the level of protection being asserted. When it is  
24 impractical to identify separately each portion of testimony that is entitled to protection and it  
25 appears that substantial portions of the testimony may qualify for protection, the Designating Party  
26 may invoke on the record (before the deposition, hearing, or other proceeding is concluded) a right  
27 to have up to 21 days from receipt of the final transcript to identify the specific portions of the  
28 testimony as to which protection is sought and to specify the level of protection being asserted.

1 Only those portions of the testimony that are appropriately designated for protection within the 21  
 2 days from receipt of the final transcript shall be covered by the provisions of this Stipulated  
 3 Protective Order. Alternatively, a Designating Party may specify, at the deposition or up to 21 days  
 4 from receipt of the final transcript if that period is properly invoked, that the entire transcript shall  
 5 be treated as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,”  
 6 or HIGHLY CONFIDENTIAL – SOURCE CODE.”

7 Parties shall give the other Parties notice if they reasonably expect a deposition, hearing, or  
 8 other proceeding to include Protected Material so that the other Parties can ensure that only  
 9 authorized individuals who have signed the “Acknowledgment and Agreement to Be Bound”  
 10 (Exhibit A) are present at those proceedings. The use of a document as an exhibit at a deposition  
 11 shall not in any way affect its designation as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL –  
 12 ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE.”

13 Transcripts containing Protected Material shall have an obvious legend on the title page that  
 14 the transcript contains Protected Material, and the title page shall be followed by a list of all pages  
 15 (including line numbers as appropriate) that have been designated as Protected Material and the  
 16 level of protection being asserted by the Designating Party. The Designating Party shall inform the  
 17 court reporter of these requirements. Any transcript that is prepared before the expiration of a 21-  
 18 day period for designation shall be treated during that period as if it had been designated “HIGHLY  
 19 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless otherwise agreed. After  
 20 the expiration of that period, the transcript shall be treated only as actually designated.

21 (c) for documents produced electronically in native format, such electronic files  
 22 and documents shall be designated for protection under this Order by including the confidentiality  
 23 designation on the placeholder sheet for each file, or shall use any other reasonable method for so  
 24 designating Protected Materials produced in electronic format. When electronic files or documents  
 25 are printed for use at deposition, in a court proceeding, or for provision in printed form to an Expert  
 26 or consultant pre-approved pursuant to Section 7.4, the party printing the electronic files or  
 27 documents shall affix a legend to the printed document corresponding to the designation of the  
 28



1 Designating Party and including the production number and designation associated with the native  
2 file; and

3 (d) for information produced in some form other than documentary form and for  
4 any other tangible items, that the Producing Party affix in a prominent place on the exterior of the  
5 container or containers in which the information or item is stored the legend “CONFIDENTIAL,”  
6 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL –  
7 SOURCE CODE.” If only a portion or portions of the information or item warrant protection, the  
8 Producing Party, to the extent practicable, shall identify the protected portion(s) and specify the  
9 level of protection being asserted.

10 5.4 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
11 designate qualified information or items does not, standing alone, waive the Designating Party’s  
12 right to secure protection under this Order for such material. Upon timely correction of a  
13 designation, the Receiving Party must make reasonable efforts to assure that the material is treated  
14 in accordance with the provisions of this Order.

## 15 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

16 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of  
17 confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality  
18 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic  
19 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to  
20 challenge a confidentiality designation by electing not to mount a challenge promptly after the  
21 original designation is disclosed.

22 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process  
23 by providing written notice of each designation it is challenging and describing the basis for each  
24 challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must  
25 recite that the challenge to confidentiality is being made in accordance with this specific Section of  
26 the Stipulated Protective Order. The Parties shall attempt to resolve each challenge in good faith  
27 and must begin the process by conferring directly (in voice to voice dialogue; other forms of  
28 communication are not sufficient) within 25 days of the date of service of notice. In conferring, the

1 Challenging Party must explain the basis for its belief that the confidentiality designation was not  
 2 proper and must give the Designating Party an opportunity to review the designated material, to  
 3 reconsider the circumstances, and, if no change in designation is offered, to explain the basis for  
 4 the chosen designation. A Challenging Party may proceed to the next stage of the challenge process  
 5 only if it has engaged in this meet and confer process first or establishes that the Designating Party  
 6 is unwilling to participate in the meet and confer process in a timely manner.

7       6.3    Judicial Intervention. If the Parties cannot resolve a challenge without court  
 8 intervention, the Designating Party shall file and serve a motion to retain confidentiality under Civil  
 9 Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within 21 days of the  
 10 initial notice of challenge or within 14 days of the Parties agreeing that the meet and confer process  
 11 will not resolve their dispute, whichever is earlier. Each such motion must be accompanied by a  
 12 competent declaration affirming that the movant has complied with the meet and confer  
 13 requirements imposed in the preceding paragraph. Failure by the Designating Party to make such a  
 14 motion including the required declaration within 21 days (or 14 days, if applicable) shall  
 15 automatically waive the confidentiality designation for each challenged designation. In addition,  
 16 the Challenging Party may file a motion challenging a confidentiality designation at any time if  
 17 there is good cause for doing so, including a challenge to the designation of a deposition transcript  
 18 or any portions thereof. Any motion brought pursuant to this provision must be accompanied by a  
 19 competent declaration affirming that the movant has complied with the meet and confer  
 20 requirements imposed by the preceding paragraph.

21       The burden of persuasion in any such challenge proceeding shall be on the Designating  
 22 Party. Frivolous challenges and those made for an improper purpose (e.g., to harass or impose  
 23 unnecessary expenses and burdens on other Parties) may expose the Challenging Party to sanctions.  
 24 Unless the Designating Party has waived the confidentiality designation by failing to file a motion  
 25 to retain confidentiality as described above, all Parties shall continue to afford the material in  
 26 question the level of protection to which it is entitled under the Producing Party's designation until  
 27 the Court rules on the challenge.

28 //

1     **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

2             7.1     Basic Principles. A Receiving Party may use Protected Material that is disclosed or  
3 produced by another Party or by a Non-Party in connection with this case only for prosecuting,  
4 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to  
5 the categories of persons and under the conditions described in this Order. When the litigation has  
6 been terminated, a Receiving Party must comply with the provisions of Section 15.

7             Protected Material must be stored and maintained by a Receiving Party at a location and  
8 in a secure manner that ensures that access is limited to the persons authorized under this Order.

9             7.2     Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered  
10 by the Court or permitted in writing by the Designating Party, a Receiving Party may disclose any  
11 information or item designated “CONFIDENTIAL” only to:

12                   (a)     the Receiving Party’s Outside Counsel of Record in this action, as well as  
13 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the  
14 information for this litigation;

15                   (b)     Designated In-House Counsel of the Receiving Party to whom disclosure is  
16 reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement  
17 to Be Bound” (Exhibit A);

18                   (c)     Experts (as defined in this Order) of the Receiving Party to whom disclosure  
19 is reasonably necessary for this litigation and who have signed the “Acknowledgment and  
20 Agreement to Be Bound” (Exhibit A);

21                   (d)     any mediator who is assigned to hear this matter, and his or her staff, subject  
22 to their agreement to maintain confidentiality to the same degree as required by this Stipulated  
23 Protective Order, and who have signed the “Acknowledgment and Agreement to Be Bound”  
24 (Exhibit A);

25                   (e)     the Court and its personnel;

26                   (f)     court reporters and their staff, professional jury or trial consultants, and  
27 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have  
28 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

1 (g) during their depositions, witnesses in the action to whom disclosure is  
2 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound”  
3 (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the Court;

4 (h) the author or recipient of a document containing the information or a  
5 custodian or other person who otherwise possessed or knew the information; and

6 (i) any other person with the prior written consent of the Designating Party.

7 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” and  
8 “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items. Unless otherwise ordered  
9 by the Court or permitted in writing by the Designating Party, a Receiving Party may disclose any  
10 information or item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or  
11 “HIGHLY CONFIDENTIAL – SOURCE CODE” only to:

12 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as  
13 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the  
14 information for this litigation;

15 (b) Experts of the Receiving Party (1) to whom disclosure is reasonably  
16 necessary for this litigation, (2) who have signed the “Acknowledgment and Agreement to Be  
17 Bound” (Exhibit A), and (3) as to whom the procedures set forth in Section 7.4(a), below, have  
18 been followed;

19 (c) any mediator who is assigned to hear this matter, and his or her staff, subject  
20 to their agreement to maintain confidentiality to the same degree as required by this Stipulated  
21 Protective Order and who has signed the “Acknowledgment and Agreement to Be Bound” (Exhibit  
22 A);

23 (d) the Court and its personnel;

24 (e) court reporters and their staff, professional jury or trial consultants, and  
25 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have  
26 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

27 (f) the author or recipient of a document containing the information or a  
28 custodian or other person who otherwise possessed or knew the information; and

(g) any other person with the prior written consent of the Designating Party.

7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items to Experts.

(a) Unless otherwise ordered by the Court or agreed to in writing by the Designating Party, a Party that seeks to disclose to an Expert (as defined in this Order) any information or item that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” pursuant to Section 7.3(c) first must make a written request to the Designating Party that (1) identifies the general categories of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” information that the Receiving Party seeks permission to disclose to the Expert, (2) sets forth the full name of the Expert and the city and state of his or her primary residence, (3) attaches a copy of the Expert’s current resume, and (4) identifies the Expert’s current employer(s), and (5) identifies (by name and number of the case, filing date, and location of court) any litigation in connection with which the Expert has offered expert testimony, including through a declaration, report, or testimony at a deposition or trial, during the preceding five years.

(b) A Party that makes a request and provides the information specified in the preceding respective paragraphs may disclose the subject Protected Material to the identified Expert unless, within 7 days of delivering the request, the Party receives a written objection from the Designating Party. Any such objection must set forth in detail the grounds on which it is based.

(c) A Party that receives a timely written objection must meet and confer with the Designating Party (through direct voice to voice dialogue) to try to resolve the matter by agreement within seven days of the written objection. If no agreement is reached, the Designating Party may file a motion as provided in Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) seeking permission from the Court to do so. Any such motion must describe the circumstances with specificity, set forth in detail the reasons why the disclosure to the Expert is reasonably necessary, assess the risk of harm that the disclosure would entail, and suggest any additional means that could be used to reduce that risk. In addition, any such motion must be

1 accompanied by a competent declaration describing the Parties' efforts to resolve the matter by  
 2 agreement (*i.e.*, the extent and the content of the meet and confer discussions) and setting forth the  
 3 reasons advanced by the Designating Party for its refusal to approve the disclosure.

4 In any such proceeding, the Party opposing disclosure to the Expert shall bear the burden  
 5 of proving that the risk of harm that the disclosure would entail (under the safeguards proposed)  
 6 outweighs the Receiving Party's need to disclose the Protected Material to its Expert.

7 7.5 Procedures for Approving or Objecting to Disclosure of Protected Materials to  
 8 Designated In-House Counsel.

9 (a) Each Party may identify one Designated In-House Counsel, as applicable.

10 (b) The ability of Designated In-House Counsel to receive Protected Material  
 11 will be subject to the advance approval by the Designating Party or by permission of the Court. The  
 12 Party seeking approval of Designated In-House Counsel to receive Protected Material must provide  
 13 the Designating Party with the name and summary of job responsibilities for proposed Designated  
 14 In-House Counsel, and an executed copy of the "Acknowledgment and Agreement to Be Bound"  
 15 (Exhibit A), in advance of providing any Protected Material of the Designating Party to Designated  
 16 In-House Counsel. The summary of job responsibilities must identify, at minimum, the proposed  
 17 Designated In-House Counsel's: 1) title; 2) primary job responsibilities; 3) place within the  
 18 business's organization; 4) responsibilities (if any) with respect to U.S. or foreign patent  
 19 prosecution; 5) responsibilities (if any) with respect to post-grant proceedings, including claim  
 20 amendments, in any patent office; and 6) responsibilities (if any) related to competitive decision-  
 21 making (including decisions about pricing, business strategy, or product design or development).

22 (c) The Designating Party may object to the Designated In-House Counsel, and  
 23 the Parties will resolve any objections to Designated In-House Counsel, in accordance with the  
 24 procedures described in Section 7.4(b) and (c) above.

25 7.6 Legal Advice Based on Protected Material. Nothing in this Stipulated Protective  
 26 Order shall be construed to prevent Counsel from advising their clients with respect to this case  
 27 based in whole or in part upon Protected Materials, provided Counsel does not disclose the  
 28 Protected Material itself except as provided in this Order.

1     **8.     PROSECUTION BAR**

2             8.1     Absent written consent from the Designating Party, a person who is Outside Counsel  
3 of Record and who actually receives access to “HIGHLY CONFIDENTIAL – ATTORNEYS’  
4 EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” information shall not be  
5 involved in the prosecution of patents or patent applications relating to the fields of spatial  
6 computing; augmented, virtual, and hybrid (or mixed) reality technology; and precision optics (the  
7 “Barred Fields”) , including without limitation the patents asserted in this action and any patent or  
8 application claiming priority to or otherwise related to the patents asserted in this action, before any  
9 foreign or domestic agency, including the United States Patent and Trademark Office (“the Patent  
10 Office”). For purposes of this paragraph, “prosecution” includes directly or indirectly drafting,  
11 amending, advising, or otherwise affecting the scope or maintenance of patent claims. To avoid  
12 any doubt, “prosecution” as used in this paragraph does not include representing a party challenging  
13 a patent before a domestic or foreign agency (including, but not limited to, a reissue protest, *ex*  
14 *parte* reexamination or *inter partes* reexamination). This Prosecution Bar shall begin when access  
15 to “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL  
16 – SOURCE CODE” information is first received by the affected individual and shall end one (1)  
17 year after final termination of this action.

18             8.2     This Prosecution Bar in Section 8.1 is personal to the person receiving Protected  
19 Materials designated as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or  
20 “HIGHLY CONFIDENTIAL – SOURCE CODE,” as set forth in Section 8.1, and shall not be  
21 imputed to any person who did not receive or review such information (including, *e.g.*, other  
22 employees or attorneys of the law firm by which the person subject to this Prosecution Bar is  
23 employed or otherwise is associated).

24     **9.     SOURCE CODE**

25             9.1     To the extent production of source code becomes necessary in this case, a Producing  
26 Party may designate source code as “HIGHLY CONFIDENTIAL – SOURCE CODE” if it  
27 comprises or includes confidential, proprietary, or trade secret source code.  
28



1           9.2     Protected Material designated as “HIGHLY CONFIDENTIAL – SOURCE CODE”  
2 shall be subject to all of the protections afforded to “HIGHLY CONFIDENTIAL – ATTORNEYS’  
3 EYES ONLY” information, and may be disclosed only to the individuals to whom “HIGHLY  
4 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information may be disclosed, as set forth in  
5 Sections 7.3 and 7.4.

6           9.3     Any source code produced in discovery shall be made available for inspection, in a  
7 format allowing it to be reasonably reviewed and searched, during normal business hours or at other  
8 mutually agreeable times, at an office of the Producing Party’s Counsel or another mutually agreed  
9 upon location. The source code shall be made available for inspection on a secured computer in a  
10 secured room without Internet access or network access to other computers, and the Receiving Party  
11 shall not copy, remove, or otherwise transfer any portion of the source code onto any recordable  
12 media or recordable device. The Producing Party may visually monitor the activities of the  
13 Receiving Party’s representatives during any source code review, but only to ensure that there is  
14 no unauthorized recording, copying, or transmission of the source code.

15          9.4     The Receiving Party may request paper copies of limited portions of source code  
16 that are reasonably necessary for the preparation of court filings, pleadings, expert reports, or other  
17 papers, or for deposition or trial, but shall not request paper copies for the purposes of reviewing  
18 the source code other than electronically as set forth in Section 9.3 in the first instance. The  
19 Producing Party shall provide all such source code in paper form including bates numbers, the file  
20 location, the file name, and the label “HIGHLY CONFIDENTIAL - SOURCE CODE.” The  
21 Producing Party shall provide all such source code within 14 days of the request, or within a  
22 mutually agreed time. The Producing Party may challenge the amount of source code requested in  
23 hard copy form pursuant to the dispute resolution procedure and timeframes set forth in Section 6  
24 whereby the Producing Party is the “Challenging Party” and the Receiving Party is the “Designating  
25 Party” for purposes of dispute resolution.

26           The Receiving Party shall maintain a record of any individual who has inspected any portion  
27 of the source code in electronic or paper form. The Receiving Party shall maintain all paper copies  
28 of any printed portions of the source code in a secured, locked area. The Receiving Party shall not



1 create any electronic or other images of the paper copies and shall not convert any of the  
 2 information contained in the paper copies into any electronic format. The Receiving Party shall  
 3 only make additional paper copies if such additional copies are (1) necessary to prepare court  
 4 filings, pleadings, or other papers (including a testifying expert's expert report), (2) necessary for  
 5 deposition, or (3) otherwise necessary for the preparation of its case. Any paper copies used during  
 6 a deposition shall be retrieved by the Producing Party at the end of each day and must not be given  
 7 to or left with a court reporter or any other unauthorized individual.

8 **10. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**  
 9 **OTHER LITIGATION**

10 If a Party is served with a subpoena or a court order issued in other litigation that compels  
 11 disclosure of any information or items designated in this action as "CONFIDENTIAL,"  
 12 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY," or "HIGHLY CONFIDENTIAL  
 13 – SOURCE CODE," that Party must:

14 (a) promptly notify in writing the Designating Party. Such notification shall  
 15 include a copy of the subpoena or court order;

16 (b) promptly notify in writing the party who caused the subpoena or order to  
 17 issue in the other litigation that some or all of the material covered by the subpoena or order is  
 18 subject to this Stipulated Protective Order. Such notification shall include a copy of this Stipulated  
 19 Protective Order; and

20 (c) cooperate with respect to all reasonable procedures sought to be pursued by  
 21 the Designating Party whose Protected Material may be affected.

22 If the Designating Party timely seeks a protective order, the Party served with the subpoena  
 23 or court order shall not produce any information designated in this action as "CONFIDENTIAL,"  
 24 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY," or "HIGHLY CONFIDENTIAL –  
 25 SOURCE CODE" before a determination by the court from which the subpoena or order issued,  
 26 unless the Party has obtained the Designating Party's permission. The Designating Party shall bear  
 27 the burden and expense of seeking protection in that court of its confidential material—and nothing  
 28 in these provisions should be construed as authorizing or encouraging a Receiving Party in this

1 action to disobey a lawful directive from another court.

2 **11. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN**  
 3 **THIS LITIGATION**

4 11.1 The terms of this Order are applicable to information produced by a Non-Party in  
 5 this action and designated as "CONFIDENTIAL," "HIGHLY CONFIDENTIAL – ATTORNEYS'  
 6 EYES ONLY," or "HIGHLY CONFIDENTIAL – SOURCE CODE." Such information produced  
 7 by Non-Parties in connection with this litigation is protected by the remedies and relief provided  
 8 by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party from  
 9 seeking additional protections.

10 11.2 In the event that a Party is required, by a valid discovery request, to produce a Non-  
 11 Party's confidential information in its possession, and the Party is subject to an agreement with the  
 12 Non-Party not to produce the Non-Party's confidential information, then the Party shall:

13 (a) promptly notify in writing the Requesting Party and the Non-Party that some  
 14 or all of the information requested is subject to a confidentiality agreement with a Non-Party;

15 (b) promptly provide the Non-Party with a copy of the Stipulated Protective  
 16 Order in this litigation, the relevant discovery request(s), and a reasonably specific description of  
 17 the information requested; and

18 (c) make the information requested available for inspection by the Non-Party.

19 11.3 If the Non-Party fails to object or seek a protective order from this Court within 14  
 20 days of receiving the notice and accompanying information, the Receiving Party may produce the  
 21 Non-Party's confidential information responsive to the discovery request. If the Non-Party timely  
 22 seeks a protective order, the Receiving Party shall not produce any information in its possession or  
 23 control that is subject to the confidentiality agreement with the Non-Party before a determination  
 24 by the court. Absent a court order to the contrary, the Non-Party shall bear the burden and expense  
 25 of seeking protection in this court of its Protected Material.

26 **12. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

27 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected  
 28 Material to any person or in any circumstance not authorized under this Stipulated Protective Order,

the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve or destroy all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

**13. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL**

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production without prior privilege review.

**14. MISCELLANEOUS**

14.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the Court in the future.

14.2 Right to Assert Other Objections. By stipulating to the entry of this Stipulated Protective Order, no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Stipulated Protective Order.

14.3 Export Control. Disclosure of Protected Material shall be subject to all applicable laws and regulations relating to the export of technical data contained in such Protected Material, including the release of such technical data to foreign persons or nationals in the United States or elsewhere. The Producing Party shall be responsible for identifying any such controlled technical data, and the Receiving Party shall take measures necessary to ensure compliance.

14.4 Filing Protected Material. Without written permission from the Designating Party or a court order secured after appropriate notice to all interested persons, a Party may not file in the public record in this action any Protected Material. A Party that seeks to file under seal any

Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed under seal pursuant to a court order authorizing the sealing of the specific Protected Material at issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a request establishing that the Protected Material at issue is privileged, protectable as a trade secret, or otherwise entitled to protection under the law. If a Receiving Party's request to file Protected Material under seal pursuant to Civil Local Rule 79-5(e) is denied by the court, then the Receiving Party may file the Protected Material in the public record pursuant to Civil Local Rule 79-5(e)(2) unless otherwise instructed by the Court.

#### **15. FINAL DISPOSITION**

Within 60 days after the final disposition of this action, as defined in Section 4, each Receiving Party must return all Protected Material to the Producing Party or destroy such material. As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations, summaries, and any other format reproducing or capturing any of the Protected Material. Whether the Protected Material is returned or destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by the 60-day deadline that affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries or any other format reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings; motion papers; trial, deposition, and hearing transcripts; legal memoranda; correspondence; deposition and trial exhibits; expert reports; attorney work product; and consultant and expert work product, even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Stipulated Protective Order as set forth in Section 4 (DURATION).

#### **16. RULE 502(D) ORDER**

Pursuant to Fed. R. Evid. 502(d), the production of a privileged or work-product-protected document, whether inadvertent or otherwise, is not a waiver of privilege or protection from discovery in this case or in any other federal or state proceeding. For example, the mere production of privileged or work-product-protected documents in this case as part of a mass

1 production is not itself a waiver in this case or in any other federal or state proceeding. For the  
2 purposes of this Order, the term inadvertent shall be defined as “accidental” or “not on purpose.”  
3

4 **IT IS SO ORDERED.**

5  
6 Dated: \_\_\_\_\_, 2020

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7 Hon. Susan van Keulen  
8 U.S. Magistrate Judge  
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COOLEY LLP  
MICHAEL G. RHODES (116127)  
(rhodesmg@cooley.com)  
101 California Street  
5th Floor  
San Francisco, CA 94111-5800  
Telephone: (415) 693-2000

MARK F. LAMBERT (197410)  
(mlambert@cooley.com)  
TIJANA M. BRIEN (286590)  
(tbrien@cooley.com)  
JESSIE SIMPSON LAGOY (305257)  
(jsimpsonlagoy@cooley.com)  
3175 Hanover Street  
Palo Alto, CA 94304  
Telephone: (650) 843-5200  
Facsimile: (650) 849-7400

Attorneys for Plaintiff  
MAGIC LEAP, INC.

ORRICK, HERRINGTON & SUTCLIFFE LLP  
JARED BOBROW (133712)  
(jbobrow@orrick.com)  
DIANA M. RUTOWSKI (233878)  
(drutowski@orrick.com)  
DONNA T. LONG (311250)  
(dlong@orrick.com)  
1000 Marsh Road  
Menlo Park, CA 94025-1015  
Telephone: (650) 614-7685  
Facsimile: (650) 614-7400

GEOFFREY G. MOSS (258827)  
(gmoss@orrick.com)  
777 S. Figueroa St., Suite 3200  
Los Angeles, CA 90017  
Telephone: (213) 629-2020

Attorneys for Defendants  
CHI XU and HANGZHOU TAIRUO  
TECHNOLOGY CO. LTD., d/b/a NREAL

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

MAGIC LEAP, INC.,

Plaintiff,

v.

CHI XU, an individual; HANGZHOU TAIRUO  
TECHNOLOGY CO., LTD., d/b/a NREAL,

Defendants.

Case No. 5:19-cv-03445-LHK

**EXHIBIT A TO PROTECTIVE  
ORDER – ACKNOWLEDGMENT  
AND AGREEMENT TO BE BOUND**

1 I, \_\_\_\_\_, declare as follows:

2 1. My address is \_\_\_\_\_. My present employer  
3 is \_\_\_\_\_ and the address of my present employment is  
4 \_\_\_\_\_. My present occupation is \_\_\_\_\_.

5 2. I have received a copy of the Stipulated Protective Order in this action. I have  
6 carefully read and understand the provisions of the Stipulated Protective Order.

7 3. I will comply with all of the provisions of the Stipulated Protective Order. I will  
8 hold in confidence, will not disclose to anyone not qualified under the Stipulated Protective Order,  
9 and will use only for purposes of this action, any “CONFIDENTIAL,” “HIGHLY  
10 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE  
11 CODE” material, including the substance and any copy, summary, abstract, excerpt, index, or  
12 description of such material, that is disclosed to me.

13 4. I will return all “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL –  
14 ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” material that  
15 comes into my possession, and all documents and things that I have prepared relating thereto, to  
16 counsel for the party by whom I am employed or retained or from whom I received such material,  
17 upon their request.

18 5. I hereby submit to the jurisdiction of this Court for the purpose of enforcement of  
19 the Protective Order in this action.

20 I declare under penalty of perjury under the laws of the United States that the foregoing is  
21 true and correct.

22  
23 \_\_\_\_\_  
24 Date

\_\_\_\_\_  
Signature